



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 29, 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Environmental Justice News from October 28, 2004 to November 24, 2004

FROM: Nicholas Targ, Counsel
Office of Environmental Justice, OECA, USEPA

Mustafa Ali, Environmental Protection Specialist
Office of Environmental Justice, OECA, USEPA

TO: Barry E. Hill, Director
Office of Environmental Justice, OECA, USEPA

This summarizes select environmental justice news from October 27, 2004, to November 24, 2004. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: “(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low***income) or (executive order 12898) or (civil right! w/50 environmental)”. Please note that we have not included multiple articles covering the same topic.

For the period ending November 24, 2004, the following news is current:

A. News

1. “Development Projects Sparks Protests,” Korea Times, Seoul, Korea (Nov. 23, 2004).

On November 10, 2004, the Citizens Movement for Environmental Justice and 112 other civic groups held a meeting at Sejong Center for the Performing Arts. The groups protested President Roh Moo-hyun’s recent adoption of, what the group characterized as, “anti-environment policies.” According to the article, the Roh Administration had promised to adopt stronger environmental policies than his predecessor. One policy opposed by the environmentalist is the administration’s plan to construct 233 new golf courses, which the groups feel will be harmful to the environment and cause additional water shortages, the article states.

2. “Hasbro Children’s Hospital and Environmental Protection Agency Bring Asthma Education to Woonsocket Schools,” States News Service (Nov. 19, 2004).

A targeted asthma outreach and education project was launched by the Asthma and Allergy Center at Hasbro Children’s Hospital in early November in Woonsocket, Rhode Island, according to the article. The project, which focuses on elementary schools and community gathering sites, is meant to improve quality of life for children with asthma by helping families to recognize asthma triggers and manage asthma in an effective manner. The project was funded with a \$30,000 grant from EPA and is estimated to save the health care system in Rhode Island \$178,000, the article states.

3. “Environmental Justice Project,” Modesto Bee, Modesto, California (Nov. 6, 2004).

On October 18, 2004, the Roman Catholic Diocese of Stockton, California, launched a three-phase Environmental Justice Project to develop a diocese position on environmental concerns. The position will incorporate the views of diverse stakeholders, including: parish leaders; farmers; farm workers; and environmental organizations. According to the article, the stakeholder group will identify serious air, water, and land issues facing the Central Valley area. During the second phase of the project, the group will identify local success stories for potential replication. In the final phase, the group will convene to develop a plan of action to teach parishioners how to practice environmental stewardship and environmental justice.

4. Rebecca Rosen Lum, “Ruling says refinery site needs review,” Contra Costa Times, Walnut Creek, California (Nov. 6, 2004). [NT Notes: See associated item C.2.]

The article reports that a panel of the California Court of Appeals, First District, ruled that the City of Richmond erred by failing to require Chevron-Texaco to conduct a cumulative impact analysis for a planned liquid petroleum storage expansion project. The California Environmental Quality Act, according to the article, requires public agencies to examine the cumulative impact of developments, but “[t]hat’s not the way Richmond does business. You have to look at the incremental effects. This is an important case in terms of environmental justice,” Adrienne Bloch, staff attorney for Communities for a Better Environment, is quoted as saying.

5. “EPA Latest Developments,” U.S. Newswire (Nov., 4 2004)[NT Notes: A listing of grants and grantees is available at <www.epa.gov/compliance/environmentaljustice/grants>.]

Seventy-three community organizations recently received Environmental Justice Hazardous Substances Research Grants, totaling \$1.2 million, the article reports. The grants were awarded to non-profit, community-based organizations undertaking projects that focus on multiple environmental risks.

B. Legislative/Regulatory/Programmatic–

1. EPA, Notice of Availability, “Certain Ethylenebisdithiocarbamates (EBDCs) and Ethylene Thiourea (ETU); Risk Assessments and Preliminary Risk Reduction Options (Phase 3 of 4-Phase Process)”, 69 FR 68352 (Nov. 24, 2004).

The notice invites comment on risk assessments and preliminary risk reduction options for pesticides, as part of the EPA re-registration eligibility process. “To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical, unusually high exposure to mancozeb, maneb, metiram, plus a common degradate, ETU, compared to the general population.” Comments must be received by February 25, 2005, and may be emailed to <opp-docket@epa.gov>, Attention: Docket ID Number OPP-2004-0078.

2. USDA, Rural Electrification Services, Final Rule, Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes, 7 CFR Part 1720, 69 FR 63045 (Oct. 29, 2004).

This rule establishes procedures for a guarantee program for not-for-profit lenders that make loans under the Rural Electrification Act of 1936. Among other things, § 1720.15, “Equal opportunity requirements,” provides that, “[t]o comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006-28, ‘Civil Rights Impact Analysis’, will be used to document compliance in regards to environmental justice. The Civil Rights Impact Analysis will be conducted prior to application approval or a conditional commitment of guarantee.”

3. Securities and Exchange Commission, Prospectus Filing, Calvert Impact Fund, Inc. (Oct. 6, 2004).

Calvert Impact Fund, Inc., filed its prospectus for its “Small Cap Value Fund” and “Mid Cap Value Fund” with the Securities and Exchange Commission. The prospectus states that, “we believe that there are long-term benefits in an investment philosophy that demonstrates concern for the environment, labor relations, human rights and community relations. Those enterprises that exhibit a social awareness in these issues should be better prepared to meet future societal needs.” With respect to “environmental justice,” the prospectus provides, “Quite often, corporate activities that damage the environment have a disproportional impact on poor people, people of color, indigenous peoples and other marginalized groups.” In recognition of this issue, “[t]he Fund Advisor will ordinarily support proposals asking companies to report on whether environmental and health risks posed by their activities fall disproportionately on any one group or groups, and to take action to reduce those risks at reasonable cost to the company... [The Adviser will also ordinarily ask] companies to respect the rights of local and indigenous communities to participate in decisions affecting their local environment.”

4. Washington, Energy Site Facility Evaluation Council, Final Rule, WAC 463 (Oct. 11, 2004).

The final rule updates and reorganizes regulations for energy facilities (Title 463 WAC) and adopts siting standards. Among other things, § 463-42-101 establishes a “preapplication consultation” provision, and a requirement to “describe all efforts made by the applicant to

involve the public, regardless of race, ethnicity, or socioeconomic status, prior to submittal of the application to the council. The application shall also set forth information for contacting local interest and community groups to allow for meaningful involvement of all people, regardless of race, ethnicity or socioeconomic status. For example, such information may include contacts with local minority radio stations and news publications.”

C. Litigation–

1. Lucero v. Detroit Public Schools, Case No.: 01-CV-72792-DT (E.D. Mich., Oct. 7, 2004). [NT notes: This case was not found using the above stated Lexis search.]

On joint petition of the plaintiffs and defendants, the court dismissed the above captioned case and incorporated into the order the settlement reached by the parties. The underlying dispute, brought under Title VI of the Civil Rights Act of 1964 and the 14th Amendment of the United States Constitution, involved alleged threats to the health of the predominantly minority and low-income student body of a school constructed on top of a capped hazardous waste facility in Detroit, Michigan. For a description of the facts underlying the case, see Lucero v. Detroit Public Schools, No.: 01-CV-72792-DT (E.D. Mich. Sept. 30, 2003)(denying defendant’s motion to dismiss), available at <<http://www.sugarlaw.org/info/BeardSchoolOpinionSept03.pdf>>. Among other things, the settlement provides for: (1) a protocol for repairing the cap should a breach occur; (2) institutionalization of a parent-created safety committee, consisting of parents, community representatives and the Detroit Public School System’s staff, “to provide input into the process ensuring the integrity of the barrier and to allow for an institutionalized dialog between the [school system] and the community;” (3) a procedure through which a parent or legal guardian of a student attending the Roberto Clemente Learning Academy can seek to enforce compliance with the terms of the Settlement Agreement, with ongoing assistance of the court; (4) maintenance by Detroit Public Schools of adequate records (written in both English and Spanish) of site inspections, evaluations, testing, monitoring, etc., in the school office or library, to be made available to anyone in the public who requests them; and (5) “yearly training of teachers and staff assigned to [the] Roberto Clemente Learning Academy, which training shall include the process for reporting any problems with or damage to the barrier.”

2. Communities for a Better Environment v. City of Richmond, Docket No. A101913 (Ct. App. 1 Oct. 29, 2004) 2004 Cal. App. Unpub. LEXIS 9907. [NT notes: This case was not found using the above stated Lexis search.]

The First District of the California Court of Appeals rejected the City of Richmond’s “negative declaration” (finding of no significant impacts) associated with a proposed expansion of a Chevron-Texaco Liquid Petroleum Gas (LPG) tank farm located within the City. While several of the petitioner’s claims were rejected, the court found that the City failed to consider the cumulative impacts of the project. Specifically, the court rejected the City’s and Chevron-Texaco’s arguments that a cumulative impact analysis requires: (1) consideration of the incremental increase in emissions as compared to background levels; and, (2) aggregation of only similar environmental impacts.

With respect to the City’s first contention, the court held that, “the relevant question in a cumulative impacts analysis is not how the effect of the project at issue compares to the

preexisting cumulative effect, but whether any additional amount of effect should be considered significant in the context of the existing cumulative effect... Because the initial study did not conclude the spheres project would have 'zero' environmental impact, the City was obliged to analyze the project's cumulative impacts." [Internal citations and quotations omitted].

With respect to the second argument, the court rejected Chevron's claim that "a consideration of other refinery projects was unnecessary because the environmental risks posed by these other projects were different in kind from those posed by the LPG spheres project. For example, at oral argument, Chevron asserted risks of groundwater contamination with ethanol or sulfuric acid do not "cumulate" with the primary risk of the LPG spheres, which is volatility. But, however convincing it may appear, a lawyer's argument that environmental risks of various projects do not cumulate is not a scientific assessment of the interplay of risks posed by the project under review and other current and foreseeable projects at the site. It is such a scientific assessment of cumulative risks, of course, that CEQA requires."